

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4801 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

-----

NAGAJAN MERUBHAI GAREJA

Versus

CHHAYA NAGAR PALIKA

-----

Appearance:

MR PH PATHAK for Petitioners

NANAVATY ADVOCATES for Respondent No. 1, 2

-----

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 28/07/98

ORAL JUDGEMENT

Rule. Mr. N.D.Nanavati waives service of Notice of Rule. Present petition is filed by Laxman Merubhai Gareja and ors seeking a writ of mandamus to restrain the respondents from removing the present petitioners and replacing them by other daily rated employees. The respondent no.1 Chhaya Nagar Palika was formerly a Gram Panchayat and said Gram Panchayat is converted into a Nagar panchayat in the year 1994. Thereafter present

petitioner no.1 and six other persons named in Annexure.B were appointed as daily wagers on various posts shown against their names in Annexure.B between 20.6.1996 and 7.11.97. It is the claim of the present petitioners that the respondent no.1 is going to remove them from the job and to appoint new persons in their job by giving appointments to the other candidates. Said action of the respondent will be in violation of the principles of fairness and reasonableness and it will be also an arbitrary action. It is contended that it is contrary to the principles laid down by the Apex Court in the case of Dhirendra Chamoli vs. State of U.P. 1986(1) SCC 637 and in the case of Surender Singh & Ors. vs. Engineer in Chief CPWD & ors. in 1996(1) SCC .637. Therefore, they seek a writ of mandamus to restrain the respondents from removing them and appointing new persons in their places in the same capacity as daily wagers.

2. The petitioners have also alleged that they have not given same pay as is paid to the regular employees of the respondent no.1 and that action is also illegal and unjust.

3. An affidavit in reply is filed on behalf of the respondents nos 1 and 2 in in para 4 of the affidavit, the following averments are made.

"The second contention raised that it is daily rated employees are to be replaced by the other daily rated employees or temporary employees is thoroughly misconceived inasmuch as no such appointments are going to be made by the respondent no.1 Municipality without getting prior permission from the competent authority namely, the Director of Municipalities and/or the State Government."

If the above averments made by the respondents nos 1 and 2 in their affidavit are seen then it would be quite clear that the respondent no.1 municipality is not going to appoint anybody without obtaining prior permission of the competent authority i.e. Director of Municipality and they are not also going to make appointment of any daily wagers or daily rated workman.

4. There is no dispute of the fact that the appointment in question are appointments in public office. Admittedly no public advertisement was given in the local daily newspaper inviting applications for filling up the posts in question. Now it is contended by the petitioner that a notice was displayed on the notice

board of the municipality But when any post in public office is to be filled in it is expected of the officer who is in charge of the public office to advertise said post to be filled in by giving opportunity to all the persons to apply for the said post. Similarly whenever any post in public office is to be filled in, names from the Employment Exchange Department are also to be called for. Now admittedly, no such procedure was followed while giving appointment to the petitioners. Similarly the posts in question were also not got approved and sanctioned from the Director of Municipality. It seems that there is a practice in Gujarat State that the persons who are manning the municipalities to give appointment to their favoritees by not following this general rule of advertising public post in the local news paper and calling the names from the employment exchanges. Therefore, the appointment of the present petitioners was not by due process and as is expected and required to be followed by public office. Therefore, in the circumstances it could not be said that their appointments are legal and valid so as to protect their services.

5. Respondents nos 1 and 2 have clearly stated in their affidavit which I have quoted hereinabove that they are not going to fill in the posts which might become vacant in case if the present petitioners are removed by giving appointment to daily wagers and without getting the post sanctioned. But I further say that not only the respondents nos 1 and 2 should do the same but in case if they wanted to fill in any post, said post must be advertised in the newspapers. Similarly, names from the employment exchange should also be called and then the persons applying for the said post should be considered and proper selection on merits should be made for giving appointment. Therefore, in the circumstances I am unable to give any direction except as indicated above to the respondents nos 1 and 2 as regards the non removal of the present petitioners from the job as in my opinion their appointment could not be said to be legal and valid and is made without due process of law.

6. Now as regards the claim of difference of wages it being a question of fact it would be proper for the present petitioner to approach the Labour Court. Learned advocate makes a statement that he will approach the Labour Court for getting the said relief. In view of the same, I am not making any observations regarding the same. The petitioners are at liberty to approach the Labour Court in order to get difference of pay , if their

claim is tenable according to law. Thus I dispose of the petition with the above observations. Rule is made absolute in the aforesaid terms with no order as to costs.

(S.D.Pandit.J)